

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION THREE

XIAO JIE MA AKA JESSICA MA,
Defendant and Appellant,
v.
BING ZHAO AKA BILL CHAO,
Defendant and Respondent.

A151046

(Alameda County
Super. Ct. No. HG08400273)

Multiple investors prevailed in a lawsuit against Xiao Jie Ma aka Jessica Ma (Ma), Focus Management Group, LLC (Focus), and Bill Chao (collectively Defendants) for breach of fiduciary duty, fraud, and breach of contract by securing a default judgment. This appeal arises from Ma's effort to secure reimbursement from Bill Chao aka Bing Zhao (Chao or Zhao) of a portion of the judgment she paid to satisfy one of the judgment creditors.

Zhao resisted Ma's attempt at reimbursement by moving for relief from the judgment under Code of Civil Procedure section 473, subdivision (d) on the grounds the judgment was void because the plaintiffs' complaint did not give adequate notice of the damages being sought against him in violation of Code of Civil Procedure section 580. The trial court agreed and granted relief. We disagree and reverse.

BACKGROUND

In July 2008, Ann Shin, Lin Ma, Leo Pang, Godfrey Roxas, and Ken Roe (collectively Plaintiffs) sued Defendants, alleging that they retained Defendants to trade

stocks for them and sustained losses when Defendants made a “highly risky trade” that was contrary to their promised investment strategy.

The complaint alleged Focus was an investment firm with Ma as its president and chief investment officer while Chao was a Focus “agent/employee.” The complaint further alleged that Plaintiffs attended Focus investment seminars, where Defendants represented a successful strategy for investing in the stock market and “that they could and did guarantee that their clients would suffer no more than a 15% loss of investment on any trade managed by Defendants.”

Based on Defendants’ representation, “Plaintiffs retained the services of Defendants and established stock market trading accounts to be managed by Defendants. Plaintiffs deposited funds into those trading accounts as follows:

“Ann C. Shin[]	\$29,000.00
“Lin Ma	\$18,308.00
“Leo Pang	\$15,000.00
“Godfrey B. Roxas	\$50,000.00
“Ken D. Roe	\$75,000.00[.]”

Following the deposits, Plaintiffs alleged, “Defendants made a highly risky trade using all the funds of Plaintiffs. The trade resulted in a loss which depleted nearly all the funds which Plaintiffs had in their investment accounts” and “resulted in the loss of Plaintiffs’ funds.” Plaintiffs additionally pleaded that due to Defendants’ breach, they suffered “substantial losses in value, out-of-pocket [expenses], opportunity costs, appreciation, and other benefits, which they would have received”

Plaintiffs asserted four causes of action: (1) breach of fiduciary duty for speculative investments; (2) breach of fiduciary duty for a failure to use reasonable care; (3) fraud: misrepresentation; and (4) breach of contract. While the third and fourth cases of action were alleged only against Ma and Focus, the first and second causes of action were alleged against all Defendants.

Plaintiffs’ prayer for relief requested: “1. Compensatory damages in an amount according to proof, [¶] 2. Costs of suit, additional legal costs according to proof, and

prejudgment interest on all damages at the legal rate; [¶] 3. Attorney's fees and costs; and, [¶] 4. Such other and further relief as this Court deems just and proper."

Chao's default was entered on October 28, 2009. In February 2011, following a court trial in which none of the Defendants appeared, the trial court entered a default judgment in favor of all Plaintiffs. The trial court ordered that "Plaintiffs recover of and from Defendants Xiao Jie Ma aka Jessica Ma, Focus Management Group, LLC, and Bill Chao, jointly and severally, 85% of their investment plus legal interest at 7% from January 18, 2009 as follows:

"[] Ann C. Shin: \$24,650.00 principal plus \$3,578.44 interest

"[] Lin Ma: \$15,561.80 principal plus \$2,259.10 interest

"Leo Pang: \$12,750.00 principal plus \$1,850.88 interest

"Ken D. Roe: \$63,750.00 principal plus \$9,254.44 interest[.]"

The court also awarded plaintiffs costs and attorney's fees to be claimed by motion after entry of judgment. Ma appealed, and this court affirmed. (See *Shin v. Ma* (Oct. 4, 2011, A131499) [nonpub. opn.])

On July 26, 2016, plaintiff and judgment creditor Roe moved to amend the judgment to add Bing Zhao as a judgment debtor. Following an evidentiary hearing, the court granted the motion, determining that defendant Bill Chao also used the name Bing Zhao. Zhao was added to the February 2011 default judgment.

In July 2016, Ma delivered a check to Roe for \$113,187.00 for the principal amount of the judgment in his favor plus interest that had accrued since the entry of judgment in February 2011. On October 24, 2016, Ma moved for contribution from Zhao of half of the total judgment amount Ma paid to Roe, or \$56,593.50, plus postjudgment interest at a rate of 10 percent from July 27, 2016, the date of the payment. The trial court granted the motion and found "Ma may recover from Bill Chao aka Bing Zhao the amount of \$56,593.50, which is 50% of the \$113,187 she paid to Plaintiff Ken Roe."

On January 11, 2017, Zhao moved to set aside the default judgment against him pursuant to Code of Civil Procedure section 473, subdivision (d). Ma and Roe opposed, but the trial court granted Zhao's motion because "Plaintiffs never gave [Zhao] notice

that they were seeking damages against him and the other Defendants, jointly and severally, in the sum of \$133,654.66.” Ma appeals the court’s order setting aside the default judgment.

DISCUSSION

Code of Civil Procedure section 473, subdivision (d)¹ provides in relevant part: “The court . . . may, on motion of either party after notice to the other party, set aside any void judgment or order.” (§ 473, subd. (d).) “ ‘We review de novo a trial court’s determination that a judgment is void.’ ” (*Talley v. Valuation Counselors Group, Inc.* (2010) 191 Cal.App.4th 132, 146.)

Ma contends the trial court erred by declaring the default judgment void on the grounds the complaint did not state the amount of damages sought against Chao. She argues the complaint specified the maximum amount of Chao’s exposure and put him on notice of his potential liability.

“ ‘It is a fundamental concept of due process that a judgment against a defendant cannot be entered unless he was given proper notice and an opportunity to defend. [Citations.] California satisfies these due process requirements in default cases through section 580.’ [Citation.] Section 580, subdivision (a), provides in part: ‘The relief granted to the plaintiff, if there is no answer, cannot exceed that demanded in the complaint’ “ “[T]he primary purpose of the section is to guarantee defaulting parties adequate notice of the maximum judgment that may be assessed against them.” ’ [Citation.] ‘Section 580 “ensure[s] that a defendant who declines to contest an action . . . [is] not . . . subject[ed] . . . to open-ended liability” and operates as a limitation on the court’s jurisdiction.’ [Citations.] ‘ “The notice requirement of section 580 was designed to insure fundamental fairness.” ’ [Citation.]” (*In re Marriage of Eustice* (2015) 242 Cal.App.4th 1291, 1302–1303.)

Our Supreme Court instructs, “We have long interpreted section 580 in accordance with its plain language. Section 580, we have repeatedly stated, means what it says and

¹ All statutory references are to the Code of Civil Procedure.

says what it means: that a plaintiff cannot be granted more relief than is asked for in the complaint. [Citations.]” (*In re Marriage of Lippel* (1990) 51 Cal.3d 1160, 1166.)

“Except in personal injury or wrongful death cases, courts must look to the prayer of the complaint *or* to ‘allegations in the body of the complaint of the damages sought’ to determine whether a defendant has been informed of the ‘maximum liability’ he or she will face for choosing to default.” (*People ex rel. Lockyer v. Brar* (2005) 134 Cal.App.4th 659, 667.)

Here, the allegations in Plaintiffs’ complaint put Zhao sufficiently on notice of the damages Plaintiffs could obtain in a default judgment. The factual allegations expressly indicated that Plaintiffs’ two causes of action for breach of fiduciary duty were alleged against “all Defendants.” It is thus clear Zhao was among those being sued for breaching his fiduciary duty, which allegedly “resulted in the loss of Plaintiffs’ funds.” While Plaintiffs’ prayer for relief pleaded only “[c]ompensatory damages in an amount according to proof” at trial, the allegations in the body of the complaint were adequate and specific enough to communicate Plaintiffs’ maximum damages. Allegations specified how much each plaintiff gave Defendants to invest of a total investment of \$187,308. Defendants were alleged to have guaranteed their clients would suffer no more than a 15-percent loss of investment on any trade. The “highly risky trade” Defendants made “resulted in a loss which depleted nearly all the funds which Plaintiffs had in their investment accounts” and the “loss of Plaintiffs’ funds.” These allegations provided notice to Defendants, including Zhao, that Plaintiffs were seeking to recover the money they lost investing with Defendants that exceeded 15 percent of Defendants’ investment.

It is not difficult to calculate Defendants’ maximum exposure for damages. They alleged Plaintiffs collectively invested \$187,308, and Defendants promised they would lose no more than 15 percent of their money. Due to the high risk trade nearly all of the funds they invested were depleted. Thus, the complaint gave Defendants notice that Plaintiffs were claiming at least \$159,211.80 in damages (\$187,308 less 15 percent) in addition to “prejudgment interest on all damages at the legal rate.” Accordingly, the trial

court's February 2011 default judgment for \$133,654.66 against Defendants was not void.

Zhao argues the allegations did not satisfy the specificity requirements of section 580. Zhao contends that even though the complaint alleged that the Plaintiffs deposited a specific amount into their investment accounts and that Defendants' actions "depleted nearly all the funds," the allegations still "left [him] to speculate how much 'nearly all' of the funds Plaintiffs' claim" was lost. We are not persuaded. The allegations of the complaint allowed Zhao to calculate Defendants' maximum potential exposure in this lawsuit. The purpose of section 580 is to ensure "that a defendant is . . . informed of the maximum liability which he will face if he chooses to default." (*National Diversified Services, Inc. v. Bernstein* (1985) 168 Cal.App.3d 410, 417.) A complaint need not allege facts that might reduce a defendant's liability or specify the specific amount of damages sought in order to comply with section 580. Plaintiffs' allegation that "nearly all" their funds were depleted does not conflict with the allegations that gave Defendants notice of their maximum potential exposure.

Zhao also argues that the complaint failed to notify him of his potential liability because it did not allege any damages attributable specifically to him. We disagree that section 580 requires the level of specificity Zhao demands. Under section 580, "[t]he relief granted to the plaintiff, if there is no answer, cannot exceed that demanded in the complaint" (§ 580, subd. (a).) Zhao's insistence that Plaintiffs must have also alleged the particular relief sought from *each specific defendant* reads into section 580 a requirement that is simply not there. He provides no authority for that position.

We also disagree that the complaint was devoid of allegations specific to Chao beyond his status as a Focus "agent/employee." The complaint's "GENERAL ALLEGATIONS" state "Defendants . . . guarantee[d] that their clients would suffer no more than a 15% loss of investment on any trade managed by Defendants." Further, both the first and the second causes of action were expressly "[a]lleged against all Defendants," including Chao. Zhao's remaining arguments that relate to the absence of allegations of specific misrepresentations or breaches particular to him are contentions on

the merits and legal sufficiency of the complaint barred by his default. (See *Steven M. Garber & Associates v. Eskandarian* (2007) 150 Cal.App.4th 813, 823.)

Stein v. York (2010) 181 Cal.App.4th 320, which Zhao relies upon, is distinguishable. The complaint reviewed in *Stein* nowhere specified the amount of damages sought, so it could not support a default judgment in any amount. (*Id.* at p. 327.) Here, the allegations in the body of Plaintiffs' complaint specify the amount of Plaintiffs' total investment and enable a calculation of the damages sought. Moreover, *Stein*'s disapproval of actual or constructive notice and emphasis on formal notice of damages does not render the judgment against Zhao void. (*Id.* at pp. 326–327.) *Stein* rejected the plaintiff's argument that the defendant had notice of the potential damages against him based on his active participation in discovery and other pretrial procedures. (*Id.* at p. 326.) Here, the complaint served on Bill Chao, whom the trial court subsequently determined was Bing Zhao, provided formal notice of Defendants' possible financial exposure.

DISPOSITION

The order granting Zhao's motion to vacate the judgment is reversed. The trial court is directed to reenter the February 2011 judgment.

Siggins, P. J.

We concur:

Jenkins, J.

Fujisaki, J.